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*Proposed Settlement Class Counsel*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

IN RE MGM INTERNATIONAL RESORTS  
DATA BREACH LITIGATION

This Document Relates To: All actions.

Case No.: 2:20-cv-00376-GMN

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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

TANYA OWENS, et al.

Plaintiffs,

v.

MGM RESORTS INTERNATIONAL

Defendant.

Master File No. 2:23-cv-01480-GMN  
(Consolidated for pretrial proceedings with  
Case Nos. 2:23-cv-1481, 2:23-cv1537,  
2:23-cv-1549, 2:23-cv-1550, 2:23-cv1577,  
2:23-cv-1698, 2:23- cv-1719, 2:23-cv1777,  
2:23-cv-1826, 2:23-cv- 1981, 2:23-cv2042,  
2:23-cv-2064, 2:24-cv-81, 2:24-cv-00995,  
2:24-cv-00999)

**PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL  
OF CLASS ACTION SETTLEMENT AND MEMORANDUM OF LAW**

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Pursuant to Fed. R. Civ. P. 23, Plaintiffs, on behalf of themselves and the Settlement Class,<sup>1</sup> respectfully submit this Unopposed Motion for Preliminary Approval of the Class Action Settlement.

### **I. INTRODUCTION**

Defendant is a global gaming, hospitality, and entertainment company headquartered in Las Vegas, Nevada. In the course of operating its business, Defendant collects, maintains, and stores Private Information pertaining to its customers, including, but not limited to, names, contact information (such as telephone number, email address, and postal address), gender, dates of birth, driver's license numbers, passport numbers, and Social Security numbers.

In July of 2019, and then again in September of 2023, Defendant's computer systems were hacked in two separate incidents by cybercriminals resulting in the unauthorized access of tens of millions of Defendant's customers' Private Information. Following the Data Incidents, Plaintiffs and Settlement Class members began receiving notices that their Private Information was potentially involved. Thereafter, lawsuits were filed against the Defendant related to each incident.

To avoid the risk and expense of litigation, the Parties agreed to a global settlement to resolve Plaintiffs' claims for both Data Incidents on a classwide basis.<sup>2</sup> As demonstrated below, the Settlement provides significant relief for the Settlement Class, including a non-reversionary all cash \$45,000,000.00 Settlement Fund and valuable non-monetary relief.

The Court should find the Settlement is within the range of reasonableness necessary to grant Preliminary Approval under Fed. R. Civ. P. 23(e) and enter an order: (i) granting Preliminary Approval of the Settlement; (ii) provisionally certifying the Settlement Class for settlement purposes; (iii) appointing the Plaintiffs as Class Representatives; (iv) appointing John Yanchunis, Doug McNamara, E. Michelle Drake, David Berger, J. Gerard Stranch IV, Lynn Toops, James Pizzirusso, Gary Klinger, and Jeff Ostrow as Class Counsel for the Settlement Class; (v) approving the form of

<sup>1</sup> All capitalized terms used herein shall have the same meanings as those defined in Section II of the Settlement Agreement, attached as *Exhibit A*.

<sup>2</sup> Due to this Court's familiarity with the 2019 Data Incident and the similarity of the claims in both cases, including the overlapping classes, Plaintiffs' counsel for the 2019 Action and the 2023 Action collectively determined it would be in the best interest of all concerned – the Plaintiffs, the Defendant, the putative classes, and the Court – to have this Court preside over both cases, which are now being joined for settlement purposes.

the Notices and the Notice Program; (vi) approving the Claim Form and the Claim process; (vii) appointing Epiq Class Action & Claims Solutions, Inc. as the Settlement Administrator; (viii) establishing the opt-out and objection procedures and deadlines; and (ix) scheduling a Final Approval Hearing at which time the Court will consider whether to grant Final Approval of the Settlement and the Application for Attorneys' Fees, Costs and Service Awards.

## II. PROCEDURAL HISTORY

### The 2019 Action

1. In or about July 2019, unauthorized individuals accessed Defendant's network and downloaded certain customer data for approximately 37 million MGM guests. *See* Joint Declaration of Class Counsel ("Joint Decl."), attached as **Exhibit B**, ¶ 3. Defendant discovered the 2019 Data Incident on or about July 10, 2019. *Id.* According to Defendant, the unauthorized individuals acquired personally identifiable information including customers' names, postal addresses, telephone numbers, email addresses, dates of birth, and passport numbers. *Id.* However, for the vast majority of the victims, the exposure was limited to their name, postal address, email address, telephone number, and/or their date of birth. *Id.*

2. Following the 2019 Data Incident and commencing on February 21, 2019, Defendant was named in the first of eight class action lawsuits (ECF No. 1), which were eventually consolidated into the 2019 Action before the Honorable Gloria M. Navarro. (ECF No. 22, 86). The Court also appointed the 2019 Plaintiffs' interim class counsel. (ECF No. 93.)

3. On April 2, 2021, the 2019 Plaintiffs filed a consolidated class action complaint, asserting claims for negligence, negligent misrepresentation, breach of implied contract, unjust enrichment, and various state consumer protection law violations. (ECF No. 101.).

4. On June 1, 2021, Defendant filed a motion to dismiss the consolidated class action complaint, which was fully briefed. (ECF No. 103, 109, 117.)

5. On August 13, 2021, Defendant filed a motion to stay discovery while the motion to dismiss was pending, which the 2019 Plaintiffs opposed, but the Court granted. (ECF No. 115, 116, 120, 121.)

6. On November 2, 2022, the Court granted in part and denied in part Defendant's motion

1 to dismiss. (ECF No. 128.) The Court upheld the 2019 Plaintiffs' claims for negligence, breach of  
2 implied contract, and violations of some state consumer protection laws, but dismissed claims for  
3 violations of other state consumer protection laws, negligent misrepresentation, and unjust  
4 enrichment. *Id.*

5 7. On December 19, 2022, Defendant answered the 2019 consolidated complaint,  
6 denying all material allegations and alleging affirmative defenses. (ECF No. 136.)

7 8. After the Court's ruling on Defendant's motion to dismiss, the Parties in the 2019  
8 Action engaged in substantial fact discovery, including written discovery, document production,  
9 depositions, and discovery motion practice. Joint Decl. ¶ 5.

10 9. The Parties filed a Stipulated Discovery Plan and Scheduling Order on December 12,  
11 2022. (ECF No. 133.)

12 10. On December 28, 2022, the Parties attended by telephone a Scheduling Conference  
13 regarding their Joint Discovery Plan and Scheduling Order. (ECF No. 142.)

14 11. On December 29, 2022, the Court entered a Scheduling Order, granting in part and  
15 denying in part the Parties' proposed discovery plan and scheduling order. (ECF No. 143.).

16 12. On April 7, 2023, the Parties filed a joint stipulation and proposed protective order,  
17 which the Court entered on April 10, 2023. (ECF Nos. 160, 161.)

18 13. On August 8, 2023, the Parties filed a joint stipulation for voluntary dismissal without  
19 prejudice of John Dvorak as a named plaintiff and proposed class representative, which the Court  
20 granted the same day. (ECF Nos. 163, 164.)

21 14. After the Parties had engaged in and completed significant discovery, the Parties filed  
22 a stipulation and proposed order regarding modification of the discovery schedule, to complete  
23 depositions and resolve any outstanding discovery disputes. (ECF No. 175.) The Court entered the  
24 stipulation on November 8, 2023. (ECF Nos. 180, 181.)

25 15. The 2019 Plaintiffs' counsel took six depositions (five MGM employees and one of a  
26 third-party) and defended seven named-Plaintiff depositions. Joint Decl. ¶ 6. The 2019 Plaintiffs  
27 produced thousands of documents, and Plaintiffs' counsel reviewed and coded over 180,000  
28 documents produced by the Defendant. *Id.*

1           16.     The 2019 Plaintiffs filed notices of related cases on December 6, 2023 (ECF No. 183)  
2 and December 20, 2023 (ECF No. 185), seeking to relate several cases filed relating to the 2023 Data  
3 Incident, which Defendant and 2023 Plaintiffs opposed. (ECF Nos. 184, 186, 187, 188.)

4           17.     On February 20, 2024, the 2019 Plaintiffs filed a motion to compel discovery  
5 regarding the 2023 Data Breach. (ECF No. 200.) On March 15, 2024, the 2019 Plaintiffs filed a  
6 motion to compel Rule 30(b)(6) deposition testimony from Defendant. (ECF No. 211.) The Court  
7 denied both motions without prejudice on May 8, 2024. (ECF No. 229.)

8           18.     On March 15, 2024, the 2019 Plaintiffs filed a motion to compel production regarding  
9 the 2019 Plaintiffs' Fourth Set of Requests for Production, which the Court denied on May 8, 2024.  
10 (ECF Nos. 209, 230.) On April 12, 2024, the Court entered an Order granting the 2019 Parties' second  
11 request to modify the case management schedule. (ECF No. 224.)

12           19.     On July 9, 2024, the 2019 Parties filed a stipulation to stay the case pending mediation,  
13 which the Court granted that same day. (ECF Nos. 233, 234.)

14           20.     On August 14, 2024, Defendant filed a notice of withdrawal of its response to the 2019  
15 Plaintiffs' notices of related cases. (ECF No. 235.)

16           21.     On September 18, 2024, the Court issued a Minute Order stating it would accept  
17 transfer of the consolidated cases in the 2023 Action. (ECF No. 237.)

#### 18           **The 2023 Action**

19           22.     Beginning on September 7, 2023, in a separate cybersecurity incident, unauthorized  
20 individuals accessed Defendant's network by impersonating an information technology administrator  
21 and gaining access to employees' network access credentials. Joint Decl. ¶ 7. Once inside the network,  
22 the unauthorized individuals locked down Defendant's network and further gained access to  
23 approximately 37 million customers' personally identifiable information, including, but not limited  
24 to MGM's customers and guests' names, addresses, telephone numbers, email addresses, dates of  
25 birth, driver's license numbers, passport numbers, military identification numbers, and in some cases,  
26 Social Security numbers. *Id.*

27           23.     Following the 2023 Data Incident, and commencing on September 21, 2023, the  
28 Defendant was named in the first of 14 class action lawsuits. (2023 ECF No. 1.)

24. On March 19, 2024, the 2023 Plaintiffs moved to consolidate the cases. (2023 ECF No. 29.) On March 22, 2024, the Court consolidated the cases into the 2023 Action before the Honorable Richard F. Boulware, II. (2023 ECF No. 32.)

25. On April 19, 2024, the 2023 Plaintiffs moved the Court for appointment of interim lead counsel, which the Court granted on October 21, 2024. (2023 ECF No. 42, 55.)

**The 2019 Plaintiffs and 2023 Plaintiffs Agreement to Work Cooperatively for Mediation**

26. In July 2024, the 2019 Plaintiffs and the 2023 Plaintiffs agreed to participate in a joint mediation with Defendant before an experienced data breach mediator, Bruce Friedman, Esq., with JAMS in Las Vegas on August 5, 2024. Joint Decl. ¶ 8. In advance of the mediation, the 2019 Plaintiffs and the 2023 Plaintiffs propounded informal discovery requests to learn as much as possible about the 2019 Data Incident and the 2023 Data Incident. *Id.* Through the provision of informal discovery, Plaintiffs in both cases were able to evaluate the merits of Defendant's position. *Id.* The Parties also exchanged detailed mediation briefs outlining their positions with respect to liability, damages, and settlement-related issues. *Id.* The mediation was canceled for various reasons. *Id.* Thereafter, the 2019 Plaintiffs and the 2023 Plaintiffs decided to work together and collectively pursue a global settlement of the Actions. *Id.*

27. The Parties rescheduled and participated in mediation for October 10, 2024, with Mr. Friedman, in Las Vegas. (*See* ECF No. 236.) In advance of the mediation, Plaintiffs propounded additional informal discovery requests regarding the size and scope of the Data Incidents, including, but not limited to, the number of persons potentially impacted, the data elements impacted, and the geographical makeup of the putative classes. Joint Decl. ¶ 9. After a full day of negotiations, the Parties were unable to reach a settlement. Over the next several weeks, however, the Parties continued to negotiate the contours of a potential global resolution. *Id.*

28. On October 31, 2024, the 2019 Plaintiffs filed a notice of settlement, notifying the Court that all Parties (including the 2023 Plaintiffs) were able to resolve the cases. (ECF No. 238.)

29. On November 4, 2024, the Court entered a Minute Order requiring the Parties to file a joint status report every 60 days, beginning on December 2, 2024, informing the Court of the status of settlement. (ECF No. 239.)

30. On November 7, 2024, consistent with the September 18, 2024 Minute Order (ECF No. 237), the Clerk of Court was directed to transfer the 2023 Action for all further proceedings (2023 ECF No. 57).

31. The Parties signed the Agreement, which requires Plaintiffs to file this Motion for Preliminary Approval of the collective Settlement of the Actions.

### III. MATERIAL TERMS OF THE SETTLEMENT

**A. Settlement Class** - Plaintiffs seek Preliminary Approval of the following Settlement Class:

[A]ll persons in the United States whose Private Information was accessed during the Data Incidents.

Excluded from the Settlement Class are the judges presiding over the Actions and members of their direct families. Agreement ¶ 76.

**B. Settlement Fund** - The Settlement provides for a non-reversionary \$45,000,000 all cash Settlement Fund, which will be fully funded by the Defendant within 10 business days of Preliminary Approval and used to pay: (1) all Settlement Class Member Benefits; (2) any attorneys' fees and costs awarded by the Court to Class Counsel and any Service Awards to the Class Representatives; and (3) all Settlement Administration Costs. *Id.* ¶ 89. Once Defendant funds the Settlement Fund, Defendant will not be required to make any other payments under this Settlement. *Id.* ¶¶ 79, 88.

**C. Settlement Class Member Benefits** - All eligible Settlement Class members who may elect to receive Cash payments consisting of: (1) a Documented Loss Cash Payment in a maximum amount of \$15,000.00 per individual; and (2) a Tier 1, 2, or 3 Cash payment depending on whether they are a Tier 1, 2, or 3 Settlement Class Member; and (3) Financial Account Monitoring. *Id.* ¶ 92. All Settlement Class Member Cash Payments may be subject to a *pro rata* increase or decrease, depending on the number of Valid Claims and the value of all Cash Payments claimed. *Id.* If a Settlement Class Member does not submit a Valid Claim, the Settlement Class Member will release his or her claims against without receiving a Settlement Class Member Benefit. *Id.*

#### ***Documented Loss Cash Payment***

All Settlement Class Members may submit a Claim Form for a Documented Loss Cash

Payment for up to \$15,000.00 per Settlement Class Member upon presentment of documented losses fairly traceable to either Data Incident and attest under penalty of perjury to incurring documented losses, supported by reasonable documentation. These losses may include, without limitation, unreimbursed losses relating to fraud or identity theft; professional fees including attorneys' fees, accountants' fees, and fees for credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs incurred on or after the applicable Data Incident through the date of claim submission; and miscellaneous expenses such as notary, facsimile, postage, copying, mileage, and long-distance telephone charges. The supporting documentation may include receipts or other documentation not "self-prepared" by the Claimant. "Self-prepared" documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support other submitted documentation. The lack of reasonable documentation supporting a loss, or if the Claim is rejected by the Settlement Administrator for any reason, and the Settlement Class Member fails to cure his or her Claim, will result in the rejection of the Claim for a Documented Loss Cash Payment. *Id.* ¶ 92.a.

### ***Tiered Cash Payments***

In addition to a Document Loss Cash Payment, all Settlement Class members may elect a Tier Cash Payment, which is a flat cash payment the amount in which is based upon whether they are a Tier 1 Settlement Class Member, Tier 2 Settlement Class Member, or Tier 3 Settlement Class Member. The tiers are determined by the type of data a Settlement Class member had exposed in a Data Incident. The Notice will provide a unique identifier which Settlement Class members can use on the Settlement Website to determine the applicable tier. *Id.* ¶ 92.b.-d.

#### **1. Tier 1 Cash Payment – \$75.00 for Tier 1 Settlement Class members**

In addition to a Documented Loss Cash Payment, Tier 1 Settlement Class Members may also elect to receive a Tier 1 Cash Payment, which is an estimated flat cash \$75.00 payment. *Id.* ¶ 92.b.

#### **2. Tier 2 Cash Payment – \$50.00 for Tier 2 Settlement Class members**

In addition to a Documented Loss Cash Payment, Tier 2 Settlement Class members may also elect to receive a Tier 2 Cash Payment, which is an estimated flat cash \$50.00 payment. *Id.* ¶ 92.c.

### 3. Tier 3 Cash Payment – \$20.00 for Tier 3 Settlement Class members

In addition to a Documented Loss Cash Payment, Tier 3 Settlement Class members may also elect to receive a Tier 3 Cash Payment which is an estimated flat cash \$20.00 payment. *Id.* ¶ 92.d.

#### ***Financial Account Monitoring***

In addition to electing a Cash Payment, all Settlement Class Members may elect to submit a Claim for Financial Account Monitoring consisting of identity theft protection and credit monitoring as follows: one year of CyEx Identity Defense Total with three-bureau monitoring and at least \$1,000,000 of fraud/identity theft insurance. The one-year period will commence when Settlement Class Members use their codes to activate the Financial Account Monitoring product. *Id.* ¶ 92.e.

**D. Settlement Class Notice** - The Parties have agreed on a comprehensive Notice Program, which includes Email Notice, Postcard Notice, Publication Notice, Long Form Notice, a Settlement Website, and Settlement telephone line for frequently asked questions. *Id.* § VIII.

Within 10 days of Preliminary Approval, Defendant will provide the Settlement Administrator with a Class List containing, if available, the Settlement Class members' names, email addresses, postal addresses, and telephone numbers. *Id.* ¶¶ 38, 99. Within 30 days of Preliminary Approval, the Settlement Administrator will initiate Publication Notice (digitally publish on the internet and on select social media platforms) and send Email Notice to all Settlement Class members for which an email address has been provided by Defendant. *Id.* ¶¶ 67, 100. Those Settlement Class members whose Email Notice is undelivered or bounces back, as well as those Settlement Class members for which email addresses are unknown, shall be sent a Postcard Notice disseminated via U.S. Mail no later than 60 days before the original scheduled Final Approval Hearing date. *Id.* ¶ 107. Notice shall also be published on the Settlement Website and available by mail in a Long Form Notice upon request of the Settlement Administrator. *Id.* ¶¶ 53, 100. The Notice Program shall be completed 45 days before the original scheduled Final Approval Hearing. *Id.* ¶ 108.

Settlement Class members may review the Long Form Notice, key documents and dates, and answers to frequently asked questions on the Settlement Website. *Id.* ¶¶ 97(d)-(e), 101-102. They get can also get answers to the frequently asked questions and request the Long Form Notice and Claim Form by calling a toll-free telephone number. *Id.*

1 The Notice will inform the Settlement Class of the Settlement's general terms, including a  
 2 description of the Actions, who is in the Settlement Class, and what claims will be released.  
 3 Agreement, Exs. 1-4. All Notices shall include, among other information: a description of the material  
 4 terms; how to submit a Claim Form; the Claim Form Deadline; the Opt-Out deadline to be excluded  
 5 from the Settlement Class; the Objection Deadline to object to the Settlement and/or the Application  
 6 for Attorneys' Fees, Costs, and Service Awards; the Final Approval Hearing date; and the Settlement  
 7 Website address at which the Agreement and other related documents and information may be found.  
 8 Also, the Long Form Notice includes the opt-out and objection procedures. *Id.* ¶¶ 101, 104-105.

9 **E. Claim Submission Process** - To receive Settlement Class Member Benefits, Settlement  
 10 Class Members must accurately and timely submit a Claim by the Claim Form Deadline. *Id.* § IX. A  
 11 copy of the proposed Claim Form is attached to the Agreement as Exhibit 5. Claim Forms may be  
 12 submitted online through the Settlement Website or through U.S. Mail sent to the Settlement  
 13 Administrator at the address designated on the Claim Form. *Id.* ¶ 111. The Settlement Administrator  
 14 will review all Claim Forms to determine their validity, eligibility, and the type and amount of the  
 15 Cash Payment to which the Settlement Class Member may be entitled. *Id.* ¶ 112. The Claims process  
 16 includes procedures for the Settlement Administrator to identify and reject duplicate Claims; to take  
 17 any reasonable steps to prevent fraud and abuse; to send a Notice of Deficiency to a Settlement Class  
 18 Member whose Claim Form was rejected for containing incomplete or inaccurate information, and/or  
 19 omitting required information in the Claim Form, allowing for the submission of information to  
 20 validate the Claim; and to reduce or reject a Claim. *Id.* ¶¶ 113-116. The Settlement Administrator will  
 21 provide Settlement Class Members who submitted Valid Claims with their Settlement Class Member  
 22 Benefits no later than 75 days after the Effective Date. *Id.* ¶ 120. Cash Payments will be made  
 23 electronically or by paper check, and an email will be sent to Settlement Class Members electing  
 24 Financial Account Monitoring with activation instructions. *Id.* ¶¶ 121-122. Greater detail on the  
 25 Claims process is in Section IX of the Agreement.

26 **F. Disposition of Residual Funds** - The Settlement is designed to exhaust the Settlement  
 27 Fund. However, in the event there are funds remaining in the Settlement Fund, including from  
 28 uncashed checks, within 45 days following the 180-day check negotiation period, the Parties will ask

1 the Court to approve the distribution of all remaining funds to a *cy pres* recipient. *Id.* ¶ 128.

2 **G. Settlement Administrator** - The proposed Settlement Administrator, Epiq, is a well-  
3 respected and reputable third-party administrator that has significant experience with data breach  
4 settlements. *Id.* ¶ 74; *see also generally* Declaration of Cameron R. Azari, Esq. Regarding Notice  
5 Program (“Admin. Decl.”), attached as **Exhibit C**. The Settlement Administrator shall effectuate the  
6 Notice Program, handle the Claims process, administer the Settlement Fund, and distribute the  
7 Settlement Class Member Benefits to Settlement Class Members. Agreement § VII.

8 The Settlement Administrator’s duties include those specified in the Agreement. *Id.* ¶ 97. The  
9 Parties shall jointly oversee the Settlement Administrator. *Id.* ¶ 95.

10 **H. Opt-Out and Objection Procedures** - Consistent with the Settlement’s opt-out  
11 procedures, the Long Form Notice details that Settlement Class members who do not wish to  
12 participate in the Settlement may opt-out up to 30 days prior to the original Final Approval Hearing  
13 date. *Id.* ¶ 61. During the Opt-Out Period, they may mail an opt-out request to the Settlement  
14 Administrator including the Settlement Class member’s name, address, telephone number, and email  
15 address (if any), and a statement indicating a request to be excluded from the Settlement Class. *Id.* ¶  
16 104. Any Settlement Class member who does not timely opt-out shall be bound by the Agreement’s  
17 terms even if that Settlement Class Member does not submit a Claim Form. *Id.*

18 The Agreement and Long Form Notice also specify how Settlement Class Members may  
19 object to the Settlement and/or the Application for Attorneys’ Fees, Costs, and Service Awards. *Id.* ¶  
20 106. Objections must be mailed to the Clerk of the Court, Class Counsel, Defendant’s Counsel, and  
21 the Settlement Administrator. *Id.* ¶ 105. To be considered by the Court, the objection must be  
22 submitted no later than the last day of the Objection Period, as specified in the Notice (30 days before  
23 the original Final Approval Hearing date). *Id.* The objection requirements are in the Agreement,  
24 proposed Long Form Notice, and proposed Preliminary Approval Order, and will be on the Settlement  
25 Website. *Id.* ¶ 106, Exs. 4, 6.

26 **I. Release of Claims** - Plaintiffs and Settlement Class Members who do not timely and  
27 validly opt-out of the Settlement Class will be bound by the Settlement terms, including the Releases  
28 discharging the Released Claims against the Released Parties. *Id.* § XIII. The Released Claims are

1 narrowly tailored to only claims arising out of or relating to the Data Incidents.

2       **J. Service Awards** – The amount of any Service Awards for the Class Representatives  
3 shall be determined by the Court and payable from the Settlement Fund. Agreement ¶ 125. Class  
4 Counsel shall apply for a Service Award in the amount of \$10,000.00 each for those Plaintiffs that  
5 were deposed in the 2019 Action and \$3,500.00 each for those Plaintiffs in the 2023 Action. *Id.* The  
6 Settlement is not contingent on approval of the requests for Service Awards, and if the Court grants  
7 amounts other than what was requested, the remaining provisions of the Agreement shall remain in  
8 force. *Id.* ¶ 127. The Notice advise of the Service Awards that will be sought. *Id.*, Ex. 1-4.

9       **K. Attorneys’ Fees and Costs** - The amount of any attorneys’ fees and costs shall be  
10 determined by the Court and payable from the Settlement Fund. Agreement ¶ 126. In the Application  
11 for Attorneys’ Fees, Costs, and Service Awards filed as part of the Motion for Final Approval, Class  
12 Counsel shall apply for an award of attorneys’ fees of up to 30% of the Settlement Fund, plus  
13 reimbursement of costs. *Id.* The Settlement is not contingent on approval of the requests for attorneys’  
14 fees and costs, and if the Court grants amounts other than what was requested, the remaining  
15 provisions of the Agreement shall remain in force. *Id.* ¶ 127. The Notice will advise the Settlement  
16 Class of the amount of attorneys’ fees that Class Counsel intends to seek. *Id.*, Ex. 1-4.

#### 17 **IV. ARGUMENT**

18       A class action may not be settled without the approval of the court. Fed. R. Civ. Proc. 23(e).  
19 The decision to approve or reject a proposed settlement “is committed to the sound discretion of the  
20 trial judge[.]” *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). The Supreme Court  
21 has recognized the benefits of a proposed settlement of a class action can be realized only through the  
22 certification of a settlement class. *See Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

23       In *Andersen v. Briad Restaurant Group LLC*, No. 2:14-cv-00786-GMN-BNW, 2022 WL  
24 181262, at \*2 (D. Nev. Jan. 19, 2022) (Navarro, J.), this Court observed:

25       The Ninth Circuit has declared that a strong judicial policy favors settlement of class  
26 actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).  
27 However, a class action may not be settled without court approval. Fed. R. Civ. P.  
28 23(e). When the parties to a putative class action reach a settlement agreement prior  
to class certification, “courts must peruse the proposed compromise to ratify both the  
propriety of the certification and the fairness of the settlement.” *Staton v. Boeing Co.*,  
327 F.3d 938, 952 (9th Cir. 2003). At the preliminary stage, the court must first assess

whether a class exists. *Id.* (citing *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620, 117 S. Ct. 2231, 138 L.Ed.2d 689 (1997)). Second, the court must determine whether the proposed settlement “is fundamentally fair, adequate, and reasonable.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). If the court preliminarily certifies the class and finds the proposed settlement fair to its members, the court schedules a fairness hearing where it will make a final determination as to the fairness of the class settlement. Third, the court must “direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1).

#### **A. The Settlement Class Should Be Certified.**

Plaintiffs must satisfy all Fed. R. Civ. P. 23(a) (numerosity, commonality, typicality, and adequacy), and one of the requirements of Fed. R. Civ. P. 23(b). Plaintiffs seek certification under Rule 23(b)(3), requiring common questions of law or fact to predominate over any individual issues and class treatment to be the superior method for efficiently handling the case. Fed. R. Civ. P. 23(b)(3). These requirements are met for settlement purposes.

**1. Ascertainability** - Ascertainability is an implied Rule 23 prerequisite. Before a district court can consider whether a potential class satisfies Rule 23(a), it must find the proposed class is “precise, objective, and presently ascertainable.” *Andersen v. Briad Restaurant Group LLC*, No. 2:14-cv-00786-GMN-BNW, 2020 WL 633599, at \*1 (D. Nev. Jan. 13, 2020) (Navarro, J.). Class certification and ascertainability typically involve one inquiry because, without an adequate class definition, a court cannot ascertain who belongs in the class. A proposed class is ascertainable if it is adequately defined such that its membership is capable of determination. Ascertainability may be satisfied if it is “administratively feasible” for the court to determine whether a particular individual is a member, though this is not a prerequisite to certification. *Briseno v. ConAgra Foods, Inc.*, 944 F.3d 1121 (9th Cir. 2017). Here, the Settlement Class is adequately defined and clearly ascertainable because the Settlement Class definition contains sufficient objective criteria to allow an individual to determine whether he or she is a member of the Settlement Class—i.e., whether they were sent notice that their Private Information was accessed during the Data Incidents. Agreement ¶ 76.

**2. Rule 23(a)** - Under Rule 23(a), the Court must determine whether: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. Each requirement is satisfied here.

1       **Numerosity** - Rule 23(a)(1) requires that a class include so many members that joinder of all  
 2 would be impracticable. “Impracticability does not mean ‘impossibility,’ but only the difficulty or  
 3 inconvenience of joining all members of the class.” *Harris v. Palm Springs Alpine Estates, Inc.*, 329  
 4 F.2d 909, 913–14 (9th Cir. 1964) (citation omitted). Generally, numerosity is satisfied when the class  
 5 exceeds 40 members. *Andersen v. Briad Restaurant Group, LLC*, 333 F.R.D. 194, 202 (D. Nev. 2019)  
 6 (Navarro, J.). Here, the joinder of millions of Settlement Class members would certainly be  
 7 impracticable, satisfying numerosity.

8       **Commonality** - Rule 23(a)(2) requires a showing that there are questions of law or fact  
 9 common to the class. Commonality is satisfied where the plaintiffs assert claims that “depend upon a  
 10 common contention” that is “of such a nature that it is capable of class-wide resolution—which means  
 11 that determination of its truth or falsity will resolve an issue that is central to the validity of each one  
 12 of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Commonality  
 13 is a permissive requirement, and “not all questions of fact and law need be common to satisfy the  
 14 rule.” *Hanlon*, 150 F.3d at 1019. The “existence of shared legal issues with divergent factual  
 15 predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies  
 16 within the class.” *Id.* at 1019–20. A single common question will do. *Andersen*, 333 F.R.D. at 203.

17       Courts in this Circuit have previously addressed this requirement in the context of data breach  
 18 class actions and found it satisfied. *See, e.g., In re PostMeds, Inc. Data Breach Litig.*, No. 23-cv-  
 19 05710-HSG, 2024 WL 4894293, at \*2 (N.D. Cal. Nov. 26, 2024) (commonality satisfied because  
 20 claims turn on whether defendant had legal duty to use reasonable security measures to protect class  
 21 members’ personal information, whether that duty was breached, and whether defendant’s data  
 22 security was adequate to protect personal information). Here, as in other data breach cases, the claims  
 23 turn on whether Defendant’s security environment was adequate to protect the Settlement Class’  
 24 Private Information. That inquiry can be fairly resolved for all Settlement Class members once  
 25 because it revolves around evidence that does not vary between members, at least for purposes of the  
 26 Settlement. Indeed, the Data Incidents impacted each Settlement Class member’s Private Information.

27       **Typicality** - The commonality and typicality analyses often overlap—both focus on whether  
 28 a sufficient nexus exists between the legal claims of the named class representatives and those of

individual class members to warrant class certification. *Hashemi v. Bosley, Inc.*, No. CV 21-946 PSG (RAOx), 2022 WL 2155117, at \*3 (C.D. Cal. Feb. 22, 2022) (citing *Gen. Tel. Co. Sw. v. Falcon*, 457 U.S. 147, 157 n.13 (1982)). “The test of typicality ‘is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.’” *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 984 (9th Cir. 2011) (citation omitted). *See also Andersen*, 333 F.R.D. at 203 (same). “Typicality refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought.” *Id.* “Under the ‘permissive standards’ of Rule 23(a)(3), ‘representative claims are ‘typical’ if they are reasonably co-extensive with those of absent class members; they need not be substantially identical.’” *Hanlon*, 150 F.3d at 1020.

Here, typicality is satisfied because Plaintiffs’ interests are aligned with the Settlement Class in that they all received a notice letter(s) informing them their Private Information was accessed in one or both the Data Incidents and were therefore impacted by the same purportedly inadequate data security that allegedly harmed the rest of the Settlement Class. Their claims are based on the same legal theories and underlying event.

***Adequacy of Representation*** - “‘To satisfy constitutional due process concerns, absent class members must be afforded adequate representation before entry of a judgment which binds them.’” *Andersen*, 333 F.R.D. at 204 (citation omitted). Fed. R. Civ. P. 23(a)(4) requires the representative parties “fairly and adequately protect the interests of the class.” This determination turns on two questions: “(1) [d]o the representative plaintiffs and their counsel have any conflicts of interest with other class members, and (2) will the representative plaintiffs and their counsel prosecute the action vigorously on behalf of the class?” *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003); *Andersen*, 333 F.R.D. at 204. Both components are met.

Like all Settlement Class members, Plaintiffs have claims against Defendant arising from the Data Incidents. Joint Decl. ¶ 10. Plaintiffs were similarly injured by Defendant’s allegedly wrongful acts. *Id.* Proof of Plaintiffs’ claims would necessarily involve adjudicating the same issues of law and fact as the claims of the Settlement Class as a whole. *Id.* Thus, Plaintiffs and the Settlement Class they seek to represent have the same interests in recovering damages. Further, Plaintiffs have also

1 diligently and adequately prosecuted the Actions through Class Counsel by, among other things,  
 2 reviewing filings, promptly providing documents and information to Class counsel, the 2019  
 3 Plaintiffs responding to written discovery requests and being deposed, acting in the best interest of  
 4 the Settlement Class, and accepting the classwide Settlement. Joint Decl. ¶ 11. Plaintiffs' willingness  
 5 to serve as Class Representatives demonstrates their serious commitment to bringing about the best  
 6 results for the Settlement Class.

7 Also, Class Counsel, who the Court has already appointed on an interim basis, are adequate  
 8 to represent the Settlement Class' interests and should be appointed Settlement Class Counsel. In  
 9 retaining these firms, Plaintiffs employed counsel who are "qualified, experienced and able to conduct  
 10 the proposed litigation." *Hester v. Vision Airlines, Inc.*, No. 2:09-cv-00117, 2009 WL 4893185, at \*5  
 11 (D. Nev. Dec. 16, 2009) (internal quotation omitted). With their extensive experience in class actions  
 12 and other complex litigation, including data breach litigation, there can be no doubt Class Counsel  
 13 are adequate to represent the Settlement Class here. Joint Decl. ¶ 13 and Ex. 1-9. Class Counsel have  
 14 litigated this Actions, including, inter alia, evaluating the claims, preparing comprehensive pleadings,  
 15 pursuing formal and informal discovery, consulting with data security experts, responding to motions  
 16 to dismiss and preparing and responding to other motions, complying with Court orders and  
 17 requirements, and participating in a mediation that ultimately resulted in this Settlement. *Id.* ¶ 14, 16.  
 18 Accordingly, Plaintiffs and Class Counsel will adequately protect the Settlement Class.

19 **3. Rule 23(b)(3)** - Rule 23(b)(3) requires the court to find "questions of law or fact  
 20 common to class members predominate over questions affecting only individual members, and that a  
 21 class action is superior to other available methods for fairly and efficiently adjudicating the  
 22 controversy." Fed. R. Civ. P. 23(b)(3). When assessing predominance and superiority, the court may  
 23 consider the class will be certified for settlement purposes only, and that a showing of manageability  
 24 at trial is not required. *See Amchem*, 521 U.S. at 620 ("Confronted with a request for settlement-only  
 25 class certification, a district court need not inquire whether the case, if tried, would present intractable  
 26 management problems, . . . for the proposal is that there be no trial.").

27 **Predominance** – The predominance inquiry looks at "the legal or factual questions that  
 28 qualify each class member's case as a genuine controversy, questions that preexist any settlement."

1 *Amchem*, 521 U.S. at 623. If common questions “present a significant aspect of the case and they can  
 2 be resolved for all members of the class in a single adjudication,” then “there is clear justification for  
 3 handling the dispute on a representative rather than on an individual basis,” and the predominance  
 4 test is satisfied. *Hanlon*, 150 F.3d at 1022 (citing *Amchem*, 521 U.S. at 622). There is no definitive  
 5 test. In general, predominance is met when there exists generalized evidence which proves or  
 6 disproves an [issue or] element on a simultaneous, class-wide basis, since such proof obviates the  
 7 need to examine each class members' individual position. The main concern is “the balance between  
 8 individual and common issues.” *In re Wells Fargo Home Mortg.*, 571 F.3d 953, 959 (9th Cir. 2009).

9 Here, all Settlement Class members had their Private Information compromised in the Data  
 10 Incidents and the security practices at issue did not vary from person to person. Thus, because these  
 11 common questions represent a significant aspect of the case and they can be resolved for all members  
 12 of the class in a single adjudication, there is a clear justification for handling the dispute on a  
 13 representative rather than on an individual basis. *Id.* Predominance is readily satisfied.

14 **Superiority** – “[T]he purpose of the superiority requirement is to assure that the class action  
 15 is the most efficient and effective means of resolving the controversy.” *Wolin v. Jaguar Land Rover*  
 16 *N. Am. LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010). Rule 23(b)(3)’s non-exclusive factors are: “(A) the  
 17 interest of members of the class in individually controlling the prosecution or defense of separate  
 18 actions; (B) the extent and nature of any litigation concerning the controversy already commenced by  
 19 or against members of the class; (C) the desirability or undesirability of concentrating the litigation  
 20 of the claims in the particular forum; and (D) the difficulties likely to be encountered in the  
 21 management of a class action.” All of these factors are present here. Adjudicating individual actions  
 22 would be impractical. The amount in dispute for each Settlement Class member is too small, the  
 23 technical issues too complex, and the expert testimony and document review too costly. Joint Decl. ¶  
 24 15. Further, individual claim prosecution would be prohibitively expensive, needlessly delay  
 25 resolution, and may lead to inconsistent rulings. *Id.* Accordingly, a class action is superior. *Id.*

26 Thus, the Settlement Class should be provisionally certified.

27 **B. The Settlement Should be Preliminarily Approved.**

28 After determining settlement class certification is likely, the Court must determine whether

the Settlement is worthy of preliminary approval and providing notice to the Settlement Class. The decision to approve or reject a proposed settlement “is committed to the sound discretion of the trial judge[.]” *Hanlon*, 150 F.3d at 1026. This discretion is to be exercised “in light of the strong judicial policy that favors settlements, particularly where complex class action litigation is concerned,” which minimizes substantial litigation expenses for both sides and conserves judicial resources. *See Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir. 1998) (quotations omitted).<sup>3</sup>

The question at the preliminary approval stage is whether the Court is likely to find the Settlement is fair, adequate, and reasonable under Fed. R. Civ. P. 23(e)(2) and considering the Ninth Circuit traditional “*Churchill*” factors.<sup>4</sup>

The Rule 23(e)(2) factors are:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arms’ length;
- (C) the relief provided for the class is adequate, taking into account:
  - (i) the costs, risks, and delay of trial and appeal;
  - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
  - (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and
  - (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.

The *Churchill* factors are: “(1) the strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental

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<sup>3</sup> Courts must give “proper deference to the private consensual decision of the parties,” since “the court’s intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Hanlon*, 150 F.3d at 1027. Thus, in considering a potential settlement, the Court need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute and need not engage in a trial on the merits. *Officers for Justice v. Civil Service Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982), *cert. denied sub nom. Byrd v. Civil Serv. Comm’n*, 459 U.S. 1217 (1983).

<sup>4</sup> Rule 23(e)(2) was amended in 2018 to include explicit class settlement approval factors. However, consistent with the Advisory Committee note to that rule amendment, courts in this Circuit have made clear the amendment does not entirely displace the traditional Ninth Circuit factors, which overlap with the express Rule 23(e)(2) factors. *See, e.g., McKinney-Drobnis v. Oreshack*, 16 F.4th 594, 609 n.4 (9th Cir. 2024) (citing Fed. R. Civ. P. 23 Advisory Committee’s note to the 2018 amendment). Thus, Plaintiffs address them all for the Court’s benefit.

participant; and (8) the reaction of the class members of the proposed settlement.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011) (quoting *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)).

The Settlement warrants Preliminary Approval under the Rule 23(e)(2) and *Churchill* factors.<sup>5</sup>

**1. Adequacy of Representation (Rule 23(e)(2)(A) and *Churchill* Factor 5) - Both Class**

Counsel and the Class Representative have adequately represented the Settlement Class. Class Counsel fully investigated and litigated the facts and legal claims. Joint Decl. ¶¶ 12-15. Their substantial efforts are exhibited by the formal and informal discovery regarding the 2019 Data Incident. *Id.* While settlement of the 2023 Data Incident claims is coming at an earlier stage, Class Counsel’s efforts to use informal discovery to learn what occurred to cause the 2023 Data Incident and the Private Information impacted, before attending a full-day mediation session with an experienced mediator, allowed for arm’s length and good faith negotiations, without collusion. *Id.* ¶ 14. Class Counsel used their experience in complex class action litigation, including similar data breach actions, and devoted substantial time and resources to vigorous litigation. *Id.*

The Class Representatives also have demonstrated their adequacy by (i) having a genuine personal interest in the outcome of the case; (ii) selecting well-qualified Class Counsel; (iii) producing information and documents to Class Counsel to permit investigation and development of the complaints; (iv) being available as needed, including to respond to discovery and in the case of the 2019 Plaintiffs sitting for deposition; (v) monitoring the Actions; and (vi) reviewing the Settlement terms. Joint Decl. ¶ 11. Plaintiffs’ respective interests are coextensive and do not conflict with the interests of the Settlement Class. *Id.* ¶ 12. Plaintiffs have the same interest in the Settlement relief, and the absent Settlement Class members have no diverging interests. *Id.*

**2. The Settlement Was Negotiated at Arm’s Length (Rule 23(e)(2)(B) and *Churchill***

**Factor 6)** - This Circuit puts “a good deal of stock in the product of arms-length, negotiated resolution.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (citing *Hanlon*, 150 F.3d at 1027; *Officers for Justice*, 688 F.2d at 625). There is “[a]n initial presumption of fairness is

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<sup>5</sup> The seventh factor is inapplicable, and the eighth factor is best considered after Notice of the Settlement is sent to see if there is any opposition to the Settlement.

usually involved if the settlement is recommended by class counsel after arm's-length bargaining.”  
*Wren v. RGIS Inventory Specialists*, No. C-06-05778 JCS, 2011 WL 1230826, at \*6 (N.D. Cal. Apr. 1, 2011), supplemented, No. C-06-05778 JCS, 2011 WL 1838562 (N.D. Cal. May 13, 2011).

The Settlement is the result of good faith, informed, and arm's-length negotiations between experienced class action attorneys familiar with the legal and factual issues at stake. Joint Decl. ¶ 16. Class Counsel recommend approval of the Settlement after they thoroughly investigated and analyzed Plaintiffs' claims; fully briefed the motion to dismiss the 2019 Data Incident claims, which the court denied in part and granted in part; engaged in formal and informal discovery for the 2019 Data Incident and informal discovery for the 2023 Data Incident; and consulted with data security experts, enabling them to gain an understanding of the evidence related to central questions in the Actions and preparing them for well-informed settlement negotiations. *Id.* The Settlement was reached with the assistance of a well-respected and experienced mediator. *Id.* For these reasons and those discussed related to attorneys' fees below, there was no fraud or collusion in arriving at the Settlement.<sup>6</sup>

**3. The Adequacy of the Settlement Relief (Rule 23(e)(2)(C) and *Churchill* Factors 1-4)** - Although Plaintiffs believe their claims are strong and meritorious and the Settlement Class would ultimately prevail at trial, continued litigation against Defendant poses significant risks that make any recovery for the Settlement Class uncertain. In assessing the degree of risk of continued litigation, “the court evaluates the time and cost required.” *Adoma v. Univ. of Phoenix, Inc.*, 913 F.Supp.2d 964, 976 (E.D. Cal. 2012). “[U]nless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.” *Id.* (quoting *Nat'l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004)). “The parties . . . save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something that they might have won had they proceeded

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<sup>6</sup> None of the so-called “*Bluetooth*” factors are of concern. See *In re Bluetooth Headset Products Liability Litigation*, 654 F.3d 935, 947 (9th Cir. 2011). First, Class Counsel will not receive a disproportionate distribution from the Settlement Fund. Second, there is no clear-sailing arrangement regarding the attorneys' fees Class Counsel will seek. Agreement ¶ 127. Third, there is no provision that unawarded attorneys fees would revert to Defendant.

1 with litigation.” *Officers for Justice*, 688 F.2d at 624 (citation omitted).

2 Data breach class actions are risky. *See, e.g., In re Mednax Serv., Customer Data Sec. Breach*  
3 *Litig.*, No. 21-MD-02994-RAR, 2024 WL 1554329, at \*7 (S.D. Fla. Apr. 10, 2024); *In re Equifax*  
4 *Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247, 1273 (11th Cir. 2021) (“Settlements also save  
5 the bench and bar time, money, and headaches”); *FultonGreen v. Accolade, Inc.*, No. 18-274, 2019  
6 WL 4677954, at \*8 (E.D. Pa. Sept. 24, 2019) (noting that data breach class actions are “a risky field  
7 of litigation because [they] are uncertain and class certification is rare”). *See also, e.g., In re*  
8 *Blackbaud, Inc., Customer Data Breach Litig.*, No. 3:20-mn-02972-JFA, 2024 WL 2155221 (D.S.C.  
9 May 14, 2024) (denying class certification in a data breach case). The Settlement’s fairness is  
10 underscored by consideration of the obstacles the Settlement Class would face in ultimately  
11 succeeding on the merits, as well as the expense and likely duration of the litigation.

12 Given the significant risks involved with further litigation, the Settlement provides meaningful  
13 Settlement Class Member Benefits, including Cash Payments and Financial Account Monitoring.  
14 Also, the Claim Form submission process and distribution of Settlement Class Member Benefits is  
15 fair, convenient, and effective. Settlement Class Members will promptly receive Cash Payments by  
16 electronic means or paper check issued by the Settlement Administrator and Financial Account  
17 Monitoring, if elected. The Settlement Administrator is highly qualified to manage the entire process.  
18 *See generally* Admin Decl.. Thus, through the Settlement, Plaintiffs and Settlement Class Members  
19 gain significant benefits without having to face further risk of not receiving any relief at all. *Andersen,*  
20 2022 WL 181262 at \*7.

21 Further, the attorneys’ fees do not impact the other Settlement terms, as Class Counsel and  
22 Defendant negotiated and reached agreement regarding attorneys’ fees and costs only after reaching  
23 agreement on all other material Settlement terms. The Settlement, including disbursing the Settlement  
24 Class Member Benefits, is also not contingent on approval of the attorneys’ fee or costs award to  
25 Class Counsel or the Service Awards. Agreement ¶ 127. As the Application for Attorneys’ Fees,  
26 Costs, and Service Awards will detail, the 30% of the common Settlement Fund that will be sought  
27 is within the typical range of acceptable attorneys’ fees in the Ninth Circuit. *See Vizcaino v. Microsoft*  
28 *Corp.*, 290 F.3d 1043, 1048 (9th Cir. 2002). Finally, there are no separate agreements to disclose

under Rule 23(e)(3) because all of the Parties' agreements are in the Agreement. Joint Decl. ¶ 167.

This Settlement compares very favorably to the following approved common fund data breach settlements from around the country, given the types of data involved in the Data Incidents and class size: *In re T-Mobile Customer Data Sec. Breach Litig.*, No. 4:21-MD-03019-BCW, 2023 WL 11878508 (W.D. Mo. June 29, 2023) (\$350,000,000 for 100,000,000 class members); *In re Cap. One Consumer Data Sec. Breach Litig.*, No. 1:19-md-2915 (AJT/JFA) E.D. Va. Sept. 13, 2022) (\$190,000,000 for 98,000,000 class members); *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247 (11th Cir. 2021) (\$380,500,000 for 147,000,000 class members); *In re Yahoo! Inc. Customer Data Breach Litig.*, No. 16-MD-02752-LHK, 2020 WL 4212811 (N.D. Cal. July 20, 2020) (\$117,500,000 for 194,000,000 class members); *In re Experian Data Breach Litig.*, No. 8:15-cv-01592 AG (DFMx), ECF No. 322 (C.D. Cal. May 10, 2019) (\$22,000,000 for 15,000,000 class members); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299 (N.D. Cal. 2018) (\$115,000,000 for 79,200,000 class members). Thus, the fourth *Churchill* factor is also satisfied.

**4. The Equitable Treatment of Settlement Class Members (Rule 23(e)(2)(D))** - All Settlement Class Members are given an equal opportunity to claim Settlement Class Member Benefits. Specifically, each has the option to be reimbursed for documented losses up to \$15,000.00, may elect to receive a flat cash payment based upon their respective Settlement Class tier, and all may select Financial Account Monitoring. The tiering of additional flat cash payments reasonably assigns higher value to the more valuable categories of Private Information exfiltrated in the Data Incidents. All Settlement Class Member Cash Payments may be subject to a *pro rata* increase or decrease, depending on the number of Valid Claims and the value of all Cash Payments claimed. Thus, the Settlement Class Member Benefits distribution method will be equitable and effective.

Accordingly, the Court should find the Settlement is fair, reasonable, and adequately protects the interests of the Settlement Class members.

**C. The Court Should Appoint the Proposed Class Representatives, Class Counsel, and Settlement Administrator.**

Plaintiffs have been integral to Class Counsel throughout litigation and settlement. Joint Decl. ¶ 11. The 2019 Plaintiffs were very involved in this litigation. *Id.* They assisted with the preparation

1 of the 2019 Complaint, provided necessary factual information and helped respond to written  
 2 discovery requests, had their depositions taken, communicated with Class Counsel when needed, and  
 3 reviewed settlement documents. *Id.* The 2023 Plaintiffs assisted with the preparation of the 2023  
 4 Complaint, provided necessary factual information, communicated with Class Counsel when needed,  
 5 and reviewed settlement documents. *Id.* Moreover, Plaintiffs are committed to continuing to assist  
 6 Class Counsel through Final Approval. *Id.* ¶ 12. Because Plaintiffs are adequate, the Court should  
 7 appoint them as Class Representatives. *See* § IV.A.3., *supra*.

8 For the same reasons discussed above for adequacy of representation, and when the Court  
 9 appointed them on an interim basis in the Actions, the Court should designate John Yanchunis, Doug  
 10 McNamara, E. Michelle Drake, David Berger, J. Gerard Stranch IV, Lynn Toops, James Pizzirusso,  
 11 Gary Klinger, and Jeff Ostrow as Class Counsel. Fed. R. Civ. P. 23(g)(1)(A)’s four factors for  
 12 appointing class counsel for a certified class are (1) “the work counsel has done in identifying or  
 13 investigating potential claims in the action;” (2) “counsel’s experience in handling class actions, other  
 14 complex litigation, and the types of claims asserted in the action;” (3) “counsel’s knowledge of the  
 15 applicable law;” and (4) “the resources that counsel will commit to representing the class.” The Court  
 16 may also “consider any other matter pertinent to counsel’s ability to fairly and adequately represent  
 17 the interests of the class[.]” Fed. R. Civ. P. 23(g)(1)(B). Here, Plaintiffs and the Settlement Class are  
 18 represented by qualified and competent Class Counsel who are leaders in the class action field with  
 19 extensive experience prosecuting and resolving complex class actions. Joint Decl., Exs. 1-9. Before  
 20 commencing litigation, they investigated the potential claims against Defendant, interviewed  
 21 potential plaintiffs, and gathered information regarding the Data Incident. *Id.* ¶ 14. Class Counsel has  
 22 devoted substantial time and resources to the Actions and will continue to do so. *Id.*

23 Finally, subject to Court approval, the Parties have agreed Epiq should be the Settlement  
 24 Administrator. Epiq has a long history of successful class action administrations. *See* Admin. Decl.

25 **D. The Notice Program Will Provide the Best Notice Practicable and the Claim**  
 26 **Process is Reasonable.**

27 Under Fed. R. Civ. P. 23(e)(1), the Court should “direct notice in a reasonable manner to all  
 28 class members who would be bound” by the proposed settlement. Notice of a proposed settlement

1 must be the “best notice practicable.” Fed. R. Civ. P. 23(c)(2)(B). “[B]est notice practicable” means  
 2 “individual notice to all members who can be identified through reasonable effort.” *Eisen v. Carlisle*  
 3 *& Jacquelin*, 417 U.S. 156, 173 (1974); *see also Andersen*, 2022 WL 181262 at \*6 (notice satisfactory  
 4 if it describes the settlement terms in sufficient detail to alert those with adverse viewpoints to  
 5 investigate and to come forward to be heard). The best notice practicable is that which “is reasonably  
 6 calculated, under all of the circumstances, to apprise interested parties of the pendency of the action  
 7 and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Tr.*  
 8 *Co.*, 339 U.S. 306, 314 (1950). Moreover, Fed. R. Civ. P. 23(h)(1) requires that “[n]otice of the motion  
 9 [for attorneys’ fees] must be served on all parties and, for motions by class counsel, directed to class  
 10 members in a reasonable manner.”

11 The Notice Program satisfies the foregoing criteria. The Parties negotiated the form of the  
 12 Notices with the Settlement Administrator’s input and assistance. Notice will be directly disseminated  
 13 to all persons who fall within the Settlement Class definition and whose names, email addresses, and  
 14 postal addresses can be identified with reasonable effort from Defendant’s records, and through  
 15 databases tracking nationwide addresses and address changes, as well as through publication on  
 16 digital media. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 946 (9th Cir. 2015) (notice  
 17 provided by mail and email was sufficient). In addition, Epiq will administer the Settlement Website  
 18 containing relevant information about the Settlement and maintain the toll-free telephone line that  
 19 Settlement Class members can call. Further, the Notices include, among other information: a  
 20 description of the material terms of the Settlement; how to submit a Claim Form; the Claim Form  
 21 Deadline; the last day of the Opt-Out Period; the last day of the Objection Period for Settlement Class  
 22 Members to object to the Settlement and/or Application for Attorneys’ Fees, Costs, and Service  
 23 Awards; the Final Approval Hearing date; and the Settlement Website address at which Settlement  
 24 Class members may access this Agreement and other related documents and information. Agreement  
 25 § VIII. The Long Form Notice and Settlement Website will also detail the opt-out and objection  
 26 procedures approved by the Court. Finally, the Notice Program satisfies the requirements of Rule  
 27 23(h)(1), as the Notices will notify the Settlement Class that Class Counsel may apply to the Court  
 28 for an award of attorneys’ fees of up to 30% of the Settlement Fund, plus reimbursement of costs, and

for Service Awards for the Class Representatives. *Id.* Thus, the Court should approve the Notice Program, including the form and content of the Notices. Agreement, Exs. 1-4.

The Court should also approve the Claim Form and Claim process. The Claim Form is easily understood and may be submitted online via the Settlement Website or U.S. Mail sent to the Settlement Administrator. *Id.* ¶ 111. The Settlement Administrator will review all Claim Forms to determine their validity, eligibility, and the type and amount of the Cash Payment to which the Settlement Class Member may be entitled, and the Claim review process is robust. *Id.* ¶¶ 112-116.

#### **E. Proposed Schedule of Post-Settlement Events**

Consistent with the Agreement, Plaintiffs propose the schedule below. Plaintiffs request the Final Approval Hearing be scheduled for the week of June 16, 2025, or a later available date.

Deadline to commence Notice Program	Within 30 days of the Preliminary Approval Order
Deadline to complete Notice Program	45 days before the original Final Approval Hearing date
Deadline for filing Motion for Final Approval, including Class Counsel's Application for Attorneys' Fees, Costs, and Service Awards	45 days before the original Final Approval Hearing date
Opt-Out Period Ends	30 days before the original Final Approval Hearing date
Objection Period Ends	30 days before the original Final Approval Hearing date
Claim Form Deadline	15 days before the original Final Approval Hearing date
Final Approval Hearing	Week of June 16, 2025 (or soon thereafter based on the Court's availability).

#### **V. CONCLUSION**

Plaintiffs respectfully request the Court: (1) preliminarily approve the Settlement; (2) provisionally certify the Settlement Class for settlement purposes; (3) appoint Plaintiffs as Class Representatives; (4) appoint John Yanchunis, Doug McNamara, E. Michelle Drake, David Berger, J. Gerard Stranch IV, Lynn Toops, James Pizzirusso, Gary Klinger, and Jeff Ostrow as Class Counsel; (5) approve the Notices and Notice Program, including the opt-out and objection procedures; (6) approve the Claim Form and Claims process; (7) appoint Epiq as the Settlement Administrator; (8) schedule the Final Approval Hearing; and (9) enter the proposed Preliminary Approval Order, attached as *Exhibit D*.

Dated: January 17, 2025 Respectfully submitted,

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